

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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AMERICAN CIVIL LIBERTIES UNION OF )  
MASSACHUSETTS and LAWYERS FOR )  
CIVIL RIGHTS, )  
  )  
Plaintiffs, )  
  ) C.A. No. 19-12564-MBB  
v. )  
  )  
UNITED STATES DEPARTMENT OF )  
HOMELAND SECURITY, IMMIGRATION )  
AND CUSTOMS ENFORCEMENT, )  
  )  
Defendants. )  
  )  
  )

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**JOINT STATEMENT PURSUANT TO LOCAL RULE 16.1(D)**

Pursuant to Local Rule 16.1(d), Plaintiffs, the American Civil Liberties Union of Massachusetts (“ACLUM”) and Lawyers for Civil Rights (“LCR”) (collectively, the “Plaintiffs”), and Defendants the United States Department of Homeland Security (“DHS”) and United States Immigrations and Customs Enforcement (“ICE”) (collectively, the “Defendants”), hereby submit the following joint statement:

Plaintiffs instituted this action pursuant to the Freedom of Information Act (“FOIA”) to obtain certain records from Defendants concerning 1) the profiling of certain individuals as alleged gang members and the collaboration of Massachusetts state and local law enforcement with DHS in performing such profiling and 2) policies, communications, and other records relating to ICE’s Warrant Service Officer program.

## **I. Plaintiff's Timetable For Discovery and Motion Practice**

### **A. Fact Discovery**

Plaintiffs and Defendants (the “Parties”) do not presently anticipate any need for fact discovery (beyond the production of the requested documents and the production of a *Vaughn* index).

### **B. Motion Practice**

#### **1. Plaintiffs' Statement**

Plaintiffs propose the following schedule:

<b>Event</b>	<b>Deadline</b>
Deadline for amendments to pleadings	March 9, 2020
Deadline for Defendants to produce documents and <i>Vaughn</i> index	April 10, 2020
Deadline for Defendants to file their motion for summary judgment	May 11, 2020
Deadline for Plaintiffs to file their opposition and any cross-motion for summary judgment	June 1, 2020
Deadline for Defendants to file their opposition to Plaintiffs' motion for summary judgment	June 22, 2020
Deadline for Plaintiffs to file reply in support of their motion for summary judgment	July 6, 2020

Plaintiffs propose that motions and oppositions shall not exceed twenty (20) pages excluding the separate, Local Rule 56.1 statements of undisputed facts. Any reply memoranda shall be governed by the Local Rules.

## **II. Defendants' Position Regarding Timetable**

1. On December 23, 2019, ACLUM and LCR, (collectively, "Plaintiffs") filed a complaint alleging that DHS and ICE (collectively, "Defendants") had failed to respond to two Freedom of Information Act ("FOIA") requests that are the subject of this litigation.
2. The first FOIA request was submitted by the ACLUM and received by ICE on June 21, 2019. This request sought records concerning how law enforcement officers profile gang members. On July 1, 2019 the ICE FOIA Office informed the ACLUM that the FOIA request was too broad in scope, did not specifically identify the records sought, or was limited to only posing questions to the agency. The ICE FOIA Office asked the ACLUM to resubmit the request containing a reasonable description of the records sought within thirty (30) days from the date of ICE's letter and that the request would be administratively closed if a reasonable request was not submitted. The ACLUM did not submit a narrower or more specific request, but, instead, filed an administrative appeal, July 12, 2019, setting forth its position that the ICE FOIA Office had improperly denied the request. On administrative appeal, ICE reviewed the administrative record and determined that it would undertake a new search or modifications to the existing search with respect to category number 10 of the FOIA request. ICE remanded the appeal to the ICE FOIA Office for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents with respect to category number 10. The ICE FOIA Office affirmed the finding that the remaining categories of requested information was inappropriately broad.
3. The second FOIA request was submitted by ACLUM and LCR and received by ICE on October 16, 2019. The request sought records concerning the Warrant Service Officer (WSO) program. The ICE FOIA Office tasked the appropriate program offices and collected some

potentially responsive records that are ready for processing. ICE will begin process up to 500 pages concerning this FOIA request for release to Plaintiffs on or before April 3, 2020.

4. On January 27, 2020 the Defendants filed their Answer to the Complaint.

5. A proposed litigation schedule is premature at this time because the search for records is incomplete. It is essential that the Agency know the number of potentially responsive records before agreeing to a litigation schedule. The tasked searches may yield as few as zero potentially responsive records or as many as hundreds of thousands of potentially responsive records. The length of time the Agency will need to process the potentially responsive records depends, in part, on the universe of responsive records located. ICE has tasked additional program offices to search for records that are responsive to Plaintiffs' FOIA requests and ICE will provide a preliminary page count of the universe of potentially responsive records within the next thirty days.

5. In lieu of submitting a proposed litigation schedule, Defendants respectfully request the Court order the parties to submit monthly joint status reports to the Court providing updates on the Defendants' progress with respect to the Plaintiffs' FOIA request.

6. With respect to documents requested of Defendant DHS, the first FOIA request was forwarded to its Office of Intelligence and Analysis ("I&A") for search and review on June 21, 2019. Due to a clerical misunderstanding, I&A did not complete the search. DHS seeks to complete its search by April 1, 2020 and will propose a timeline for production, if appropriate, by that date.

### **III. Obligations of Counsel to Confer**

The Parties certify that they have conferred regarding their obligations under Local Rule 16.1(b). Plaintiffs served a written settlement proposal on Defendants at least fourteen (14) days before the date of the scheduling conference.

The Parties have consented to referral to a Magistrate Judge.

Date: March 2, 2020

Respectfully Submitted,

/s/ Lauren Godles Milgroom

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing will be filed through the electronic filing system of the Court, which system will serve counsel of record, on this second day of March, 2020.

*/s/ Lauren Godles Milgroom* \_\_\_\_\_